


INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
WABASH COLLEGE —
CRAWFORDSVILLE



Indiana Patient's Compensation Fund v. Gary Patrick

Appeal from:
Marion County Circuit Court,
The Honorable Theodore M.
Sosin, Judge

Oral Argument:
Tuesday, March 3, 2009
3:00 - 4:00 p.m.
20 minutes each side

Civil Law

Whether the trial court erred in determining that Gary Patrick, as father of the decedent, has an independent claim for damages for emotional distress in addition to his claim under the Adult Wrongful Death Act.

CASE SYNOPSIS

Facts and Procedural History

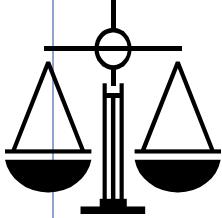
Gary Patrick (Patrick) is the natural father of Christopher Patrick. At the time of his death, Christopher was thirty-one years old, had no dependent survivors, and lived with his father. On January 20, 2002, Christopher was involved in an automobile accident and, as a result, suffered a broken wrist, broken nose, and abdominal trauma. He was treated at St. Mary's Medical Center in Evansville and discharged the next day, January 21, 2002. Patrick questioned the discharge order because

Christopher was still in pain and had substantial abdominal swelling.

That evening, Christopher started vomiting blood. Patrick called 911. When the EMT's finally arrived, Christopher had blood coming out of his nose and mouth. His eyes rolled back in his head as he fell onto his bed. The EMT's moved Christopher to the floor and attempted to resuscitate him. Christopher never regained consciousness and was pronounced dead upon arrival at the hospital. The cause of

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CASE SYNOPSIS



death was an untreated ruptured colon from seatbelt trauma.

As a result of his son's death, Patrick, individually and as a personal representative of Christopher's Estate, brought a medical malpractice action against the physician who treated Christopher and St. Mary's Medical Center. In addition to claiming damages for his son's death, Patrick asserted a claim for his own emotional distress. Patrick settled his claims against the health care providers with the health care providers agreeing to pay a present value settlement of \$187,001 in a structure that would pay out \$250,000 over time. After the settlement, Patrick, individually and as personal representative of Christopher's Estate, filed his petition for payment of damages against the Indiana Patient's Compensation Fund (PCF) pursuant to Ind. Code § 34-18-5-3.

On May 15, 2008, the PCF moved for summary judgment on Patrick's individual claim for emotional distress damages, arguing that emotional distress damages were not recoverable under the Adult Wrongful Death Act, I.C. § 34-23-1-2. Patrick opposed the motion, claiming that he had an independent claim for emotional distress arising from the circumstances surrounding the death of his adult

son. On June 27, 2008, the trial court issued its order, finding, among other things, that Patrick's claim for emotional distress damages was independent of his claim for damages under the Adult Wrongful Death Act.

Parties' Arguments

The PCF argues that Patrick's claim for emotional distress damages should be characterized as a derivative claim subject to the non-pecuniary damage limitation of the Adult Wrongful Death Act. On the other hand, Patrick asserts that his pursuit of a claim under the Adult Wrongful Death act does not deprive him of the right to bring his individual claim for emotional distress damages. Patrick contends that to hold otherwise would disregard our supreme court's opinion in *Groves v. Taylor*, 729 N.E.2d 569 (Ind. 2000).

TODAY'S PANEL OF JUDGES

Hon. Patricia A. Riley (Jasper County), Presiding

- Judge of the Court of Appeals since June 1994

Patricia A. Riley, currently the presiding judge for the Court of Appeals' Fourth District, was named to the Indiana Court of Appeals by Governor Evan Bayh in January of 1994. A native of Rensselaer, Indiana, Judge Riley earned her bachelor's degree from Indiana University -Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974. Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993. She is a former associate professor at St. Joseph's College in Rensselaer and currently an adjunct professor at the Indiana University School of Law-Indianapolis.

Judge Riley's legal memberships include the Indianapolis Bar Association, the Marion County Bar

"Appeals on Wheels"

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

The Court of Appeals has held over 200 "on the road" cases since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. Melissa S. May (Vanderburgh County)

- Judge of the Court of Appeals since April 1998

Melissa S. May was appointed to the Court of Appeals in April of 1998. Judge May was born in Elkhart, Indiana. She graduated from Indiana University-South Bend with a B.S. in 1980 and from Indiana University School of Law-Indianapolis with a J.D. in 1984.

Between law school and her appointment to the Court, Judge May practiced law in Evansville, Indiana, focusing on insurance defense and personal injury litigation.

Judge May has been active in local, state, and national bar associations and bar foundations. She served the Indiana Bar Association on the Board of Governors from 1992-1994, as Chair of the Litigation Section from 1998-1999, as Counsel to the President from 2000-2001, as Chair of the Appellate Practice Section from 2007 to 2008, and as Secretary to the Board of Governors from 2008 to 2009. In addition, she was a member of the Board of Directors of the Indiana Continuing Legal Education Forum from 1994-1999 and has been the co-chair of ICLEF's Indiana Trial Advocacy College from 2001-present. She is a fellow of the Indiana Bar Foundation, as well as for the American Bar Association, and she is a Master Fellow of the Indianapolis Bar Association.

From 1999 till December 2004, Judge May was a member of Indiana's Continuing Legal Education Commission, where she chaired the Specialization Committee. She is currently on an Advisory Panel to the Specialization Committee. In 2005, she was named to the Indiana Pro Bono Commission. In July of 2008, she was named as Chair of that Commission. In 2003, Judge May was named to the American Bar Association's Standing Committee on Attorney Specialization. She is now special counsel to that committee. In the spring of 2004, Judge May became adjunct faculty at Indiana University School of Law-Indianapolis, where she teaches a trial advocacy course. Also in the spring of 2004, she was awarded an Honorary Doctor of Civil Law from the University of Southern Indiana.

The 15 judges of the Indiana Court of Appeals issue more than 2,800 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



TODAY'S PANEL OF JUDGES

Hon. Margret G. Robb (Tippecanoe County)

- Judge of the Court of Appeals since July 1998

Margret G. Robb was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis.

Prior to joining the Court she was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender. She chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on

legal topics for attorneys and other judges.

Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000, lives in West Lafayette with her husband, a Professor of Communication at Purdue (M.A. and Ph.D., Indiana University). Their son, Douglas, a graduate of the U.S.N.A., recently embarked on his second deployment.

ATTORNEYS FOR THE PARTIES

For Appellant, Indiana Patient's Compensation Fund:

Anne L. Cowgur
Bingham McHale LLP
Indianapolis



Anne Cowgur is a 1992 graduate of the University of Illinois, with a B.A. in Broadcast Journalism, and a 1999 graduate of the University of Illinois, College of Law. She began her legal practice in May 1999 with the McTurnan & Turner firm, where she became a partner in 2007.

In January 2008, Ms. Cowgur and other members of the McTurnan & Turner firm joined Bingham McHale LLP. Her practice includes business litigation, em-

ployment litigation and appeals in both state and federal courts. This is Ms. Cowgur's second opportunity to participate in the Indiana Court of Appeals' "Appeals on Wheels" program.

For Appellee, Gary Patrick:

Jerry Garau
Garau Germano Hanley & Pennington, P. C.
Indianapolis

Jerry Garau is originally from Martinsville, Indiana. He graduated *summa cum laude* from Franklin College in 1983, and received his law degree, *cum laude*, from the Indiana University School of Law at Indianapolis in 1986.

Following graduation from law school, Mr. Garau clerked for a year for the Hon. Patrick D. Sullivan of the Indiana Court of Appeals. After completing his clerkship, Mr. Garau entered private practice with the Indianapolis law firm of Price & DeLaney.

In 1997, Mr. Garau and four other attorneys opened a new law firm focused on representing vic-

tims of medical malpractice. That firm, now known as Garau Germano Hanley & Pennington, P.C., has its offices at Market Square Center in Indianapolis and pursues cases on behalf of injured patients throughout the state of Indiana. In addition to his medical malpractice work, Mr. Garau also represents plaintiffs in the fields of personal injury, business litigation, and contract litigation.

Mr. Garau has presented numerous oral arguments before the Indiana Court of Appeals, the Indiana Supreme Court, and the United States Court of Appeals for the Seventh Circuit.